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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

ARMONDO MARTIN GALINDO,

Defendant and Appellant.

A134879

(Mendocino County
Super. Ct. No. CR 1015761)

Defendant Armondo Martin Galindo was charged with assaultive offenses against James and Jessica Walker (felony assault with a deadly weapon, a vehicle), and Dennis McMahon Sr. (McMahon Sr.) and Dennis McMahon Jr. (McMahon Jr.) (felony assault with a deadly weapon, a “stick/pole”). (Pen. Code, § 245, subd. (a)(1).¹) The felony assault charges relating to the McMahons also included sentence enhancement allegations that defendant inflicted great bodily injury on the McMahons within the meaning of section 12022.7. After a jury trial, defendant was acquitted of the assault charges concerning the Walkers. However, the jury convicted defendant of assault with a deadly weapon committed against McMahon Jr., found true the related great bodily injury allegation, and assault (§ 240) as a lesser included offense committed against McMahon Sr. The court sentenced defendant to an aggregate term of six years in state prison with presentence custody credit of one day.

¹ All further unspecified statutory references are to the Penal Code.

On appeal defendant seeks to set aside his convictions of assault against the McMahons on the ground that the People failed to prove beyond a reasonable doubt that he did not act in self-defense. He also contends that the inconsistency of the guilty verdicts undermines the usual presumption that the jury understood and followed the trial court's instructions on self-defense. We conclude defendant's contentions are without merit, and accordingly, we affirm.

FACTS

At a jury trial held in December 2011, the following testimony was elicited.

A. *The Prosecution's Case*

On November 25, 2010, James Walker and his wife Jessica Walker², were hosts of a Thanksgiving dinner at their home in the mountains. The Walker home was a rented cabin on a one-lane dirt road that connects four rented cabins on a land parcel. The guests included Jessica's father McMahon Sr., her brother McMahon Jr., James's brother Derek, and several other family members and children. The Walkers also invited as guests defendant, who rented one of the cabins, and his girlfriend Sharina Farnsworth. Starting at about noon and continuing through the day, the adults were drinking beer and other alcoholic beverages.

After dinner, the guests walked to a fire pit near the Walker cabin. The Walkers saw defendant push a very intoxicated Farnsworth, and heard him verbally abusing her. When a fire could not be started in the pit, the guests walked back to the Walkers's cabin. Defendant asked for help to get Farnsworth into his Jeep. Farnsworth said she wanted to go to the Walker cabin and she did not get into the Jeep. Because both defendant and Farnsworth were "pretty intoxicated," Jessica Walker told defendant that he could come back to the cabin as well. However, defendant got into his Jeep and sped off in the direction of his own cabin.

As dusk approached, the Walkers walked towards defendant's cabin to calm him. While the Walkers were on the shared road that led from their cabin to defendant's cabin,

² Because the Walkers share the same surname, we also refer to them by their first names for clarity and convenience.

defendant drove his Jeep towards the Walkers, who were forced to dive and run out of the way. The Walkers returned to their cabin.³ Defendant continued to drive his car quickly and erratically back and forth on the shared road multiple times. Periodically defendant stopped his Jeep on the shared road in front of the driveway to the Walker cabin. One time, an unarmed McMahon Sr. told defendant that he needed to go home or leave the property. Defendant did not respond, and instead, started and floored the Jeep, running over McMahon Sr.'s foot. Another time, James Walker and McMahon Jr., both unarmed, confronted and spoke with defendant, who just sped off and drove towards his cabin.

Later, when it was completely dark outside, McMahon Jr. left the Walker cabin and walked down the shared road to talk to defendant's landlord, Steve, to ask his help. Steve lived in a cabin adjoining defendant's cabin. McMahon Jr. did not have a weapon and he was not upset at all at defendant. When McMahon Sr. learned that McMahon Jr. had gone alone, he followed his son walking towards Steve's home. McMahon Sr. did not have a weapon.

As McMahon Jr. was walking on the shared road, defendant jumped out from behind a tree. Defendant struck McMahon Jr. on the jaw with an object so hard that McMahon Jr. lost consciousness.⁴ McMahon Sr. did not see the initial confrontation between his son and defendant. As McMahon Sr. walked down the shared road, "a beam of light coming from Steve's house" illuminated the area. McMahon Sr. saw his son's head bounce off the side of the hill, and his son appeared to be unconscious. McMahon Sr. attempted to dive on top of his son to protect him. Before McMahon Sr. could reach

³ According to McMahon Jr., the Walkers were having a conversation with defendant, when defendant backed up the Jeep about 30 feet and then "drove up at them," and then drove at McMahon Jr. McMahon Jr. did not recall that anyone had to jump out of defendant's way. After looking at an investigator's report marked as Defense Exhibit B, McMahon Jr. testified that he did not recall talking to the investigator about the case. However, it was possible he had told the investigator that James Walker was forced to jump out of the way of defendant's car.

⁴ McMahon Jr. knew his attacker was defendant because "[t]here was a little light over the gate, just a couple little lights that were shi[n]g right on to me."

his son, defendant struck McMahon Sr. on the back of his ear with an object that felt like a pipe, five or six feet long.⁵ McMahon Sr. landed on his back on top of his son. Defendant then struck McMahon Sr. on his arms “definitely more than 25” times while McMahon Sr. was on the ground. McMahon Sr. heard defendant say, “Fuck with me? Fuck with me?” When McMahon Jr. regained consciousness, he saw defendant beating his father with an object that was “some type of, like, pipe or . . . stick” and “really long,” “about five to six feet long.” As McMahon Jr. got to his hands and knees, defendant struck him two or three times causing McMahon Jr. to fall back to the ground, and McMahon Sr. attacked defendant to get him off his son. Defendant then went back to hitting McMahon Sr. with the object in his hands. McMahon Jr. was able to scream for help.⁶

James Walker heard screaming and he and his brother Derek, both unarmed, ran down the shared road towards defendant’s cabin. On the shared road near defendant’s cabin, James first found McMahon Jr. hunched over and saying, “Go save dad.” Closer to defendant’s cabin, James found McMahon Sr. on the ground on the shared road. Even closer to defendant’s cabin, James saw defendant standing on the shared road holding in his hand an object that looked like a long pole. Defendant threw the object down and ran away. James and Derek helped McMahon Jr. and McMahon Sr. back to the Walkers’s cabin. Jessica Walker called 911. While waiting for the police, the Walkers went outside and stayed in their front yard. Jessica Walker was armed with a golf club, and James Walker was armed with a .22 rifle. When the Walkers heard someone trying to move Jessica’s car, James shouted to the person inside the car to get out and then fired one to three gunshots into the ground.

At 7:00 or 7:30 p.m., Mendocino County supervising Sheriff’s Deputy Darren Brewster received a dispatch call of a possible assault with a deadly weapon with multiple victims. Brewster responded to the Walker cabin and disarmed James Walker.

⁵ McMahon Sr. never actually saw anything in defendant’s hands.

⁶ McMahon Jr. testified he had to spit his teeth out to scream. However, his admitted medical records indicated he had “no missing or dislodged teeth.”

The deputy heard screaming and yelling from inside the cabin. Once inside, the scene was “very chaotic.” One man was on the ground bleeding from his face. Another man was bleeding from his left ear, “like his ear was almost gone,” and “holding his arm screaming that he thought his arm or his shoulder was broken.” Defendant was identified as the suspected assailant. The deputy left the Walker cabin and found Farnsworth, “really intoxicated,” disheveled, without any shoes, and face down in the mud on the shared road outside the Walkers’s cabin. The deputy did not observe any injuries on Farnsworth. At the deputy’s request, the Walkers took Farnsworth back to their cabin. The deputy then continued to walk on the shared road looking for defendant. The deputy found no one at defendant’s cabin. On his way back to the Walker cabin, just off the shared road, the deputy found a stick (wooden tool handle)⁷, some keys and shoes, and some blood. When the deputy reentered the Walker cabin, the scene was still “very chaotic,” it appeared that “pretty much everybody . . . was intoxicated,” including the Walkers, McMahon Sr., McMahon Jr., and Farnsworth, and everyone was very upset because medical assistance had not yet arrived for the two injured men. At about 11:00 p.m. that evening, Brewster learned that defendant was in his cabin. The deputy entered through the cabin’s unlocked front door, found defendant sleeping in a sleeping bag, woke him, and arrested him.

McMahon Sr. and McMahon Jr. were taken to separate hospitals for treatment of their injuries. McMahon Jr.’s most significant injury was a fractured jaw, which had been broken in seven places, and had to be surgically repaired. McMahon Sr.’s major injury was to the left ear cartilage, which was torn in four pieces, and there was a total of nine centimeters of superficial lacerations to the outside ear. The doctor was able to

⁷ McMahon Sr. testified that he did not think the stick recovered by Deputy Brewster was used by defendant during the assault because he “would break that over [his] knee.” McMahon Sr. denied telling anyone that defendant had used a wooden weapon. In both opening and closing arguments, the trial prosecutor told the jury that it was not known if the stick found by Deputy Brewster was used by defendant. The stick was admitted into evidence because it was found at the scene near some blood, it might or might not be the weapon used by defendant, and it was the jury’s job to interpret and determine whether the evidence was relevant.

“fully repair both the ear cartilage and then put the skin flaps over the cartilage for what appear[ed] to be an excellent repair.”⁸

B. *Defense Case*

Sharina Farnsworth, defendant’s girlfriend, testified that on Thanksgiving day of 2010, she and defendant had eaten their dinner at defendant’s home around noon. At 3:30 or 4:00 p.m., James and Derek Walker, McMahon Sr., and McMahon Jr. came by and invited defendant and Farnsworth for a second dinner. Defendant and Farnsworth arrived at the Walker cabin between 4:00 and 4:30 p.m. Defendant and Farnsworth proceeded to eat another dinner and drank a couple of beers. Farnsworth was uncomfortable during dinner because she felt James Walker was making advances. Farnsworth moved from where she was sitting and sat with defendant. After dinner, Farnsworth had two mixed drinks made by Jessica Walker. She drank the first one, but she did not finish the second one because it was too strong and she felt she was blacking out. Next, Farnsworth recalled that it was dark, she was on the shared road outside the Walker cabin, running from the Walkers. She heard three or four gunshots, and then she blacked out again. The next thing she remembered was walking up to the Walker cabin and finding the paramedics inside. Farnsworth did not recall going to the fire pit, walking back from the fire pit, defendant getting into his vehicle, or being woken up by Deputy Brewster. Farnsworth did not see defendant from the time she first blacked out until she returned to his cabin several hours later.

⁸ McMahon Sr. testified that he also suffered injuries to his hand, and he had two broken arms, a broken foot, and two busted eardrums. McMahon Sr.’s admitted medical records indicated that a superficial scalp laceration and the right elbow were “Dermabonded,” and a “significant left hand laceration” was repaired with sutures. McMahon Sr. refused a shoulder mobilizer or sling because he had one at home for the appropriate extremity. Subsequent x-rays indicated McMahon Sr. had no left forearm fracture, no acute left hand fracture, and no definite fracture of the right elbow, but the positioning of the joint was “a little suboptimal.” The paramedic at the scene reported that McMahon Sr. had a left ankle and foot injury. However, the emergency room report indicated McMahon Sr. had no lacerations, lesions, or pain in his lower extremities and he was ambulatory.

Defendant testified that after he arrived at the Walkers, he had dinner and some beers. During the course of day, defendant had no more than five beers but he was not sober. After the guests had walked to the fire pit, a disagreement arose among the men and defendant decided to go home with Farnsworth. He tried to get Farnsworth into his Jeep. However, the Walkers were carrying Farnsworth, who looked helpless because she was so drunk. The Walkers refused to put Farnsworth in the Jeep and they took her to their cabin. Defendant got angry and left alone in his car.

Defendant admitted he drove up and down the shared road a couple of times, but he denied aiming his car or trying to hit anyone with his car. After leaving the Walker cabin, he went to his cabin, turned around, and drove back towards the Walker cabin. As he was coming back, James Walker hit the Jeep windshield with a golf club. The golf club cracked the Jeep's windshield. Although he was scared after James's attack on his car, and he was driving in the direction of the sheriff's office, defendant did not go to the sheriff's office and decided to turn around and go back to his cabin. Defendant stopped his jeep after seeing James Walker, still holding a golf club, and standing "by the gate" to defendant's property. McMahon Jr. hit defendant in the face through the open window of the Jeep. Defendant then drove to his cabin because he was frightened and concerned for his safety.

Defendant initially testified that once inside his cabin, he heard "the McMahons and several of the girls," all screaming, "Let's get him." Defendant prepared himself because he had seen that they were carrying sticks. Defendant "ducked . . . into the bushes" and waited for the group to pass, and he "did what [he] had to do to get away because they were coming after [him]." When he was again asked what happened after he heard a group of people approach his cabin, defendant testified that as he was hiding in his cabin, he heard "[t]he mass, the group_[s]" "yelling, coming down the road." When asked if he could see if the group had weapons, defendant replied, "[d]on't add too much to the mass. I said this is what I thought I heard coming." Defendant heard yelling, his gate open, and the cabin front door open. There was no lock on the cabin front door. Defendant was waiting in the mudroom without any weapons. When asked who he saw,

defendant replied, McMahon Sr. and McMahon Jr. Defendant thought McMahon Sr. was carrying the stick that was recovered by Deputy Brewster. McMahon Jr. did not appear to have any weapon. McMahon Sr. was the first to come through the door and landed a grazing blow with the stick on defendant's body.⁹ After the initial blow, McMahon Sr. did not hit defendant again with stick. Instead, both McMahon Sr. and McMahon Jr. "were grabbing, pulling" defendant all over his body with their fists. There was "an ongoing struggle" or "fight." Defendant hit back with his hands, admitting that he punched McMahon Jr. one time in his jaw and he hit McMahon Sr. all over including his face. Defendant did not injure his hands in the struggle. Defendant did not know when McMahon Sr. dropped his weapon, but he still had the weapon with him when the struggle moved out to the road. Defendant continued to struggle with McMahon Jr., who did not have a weapon as far as defendant knew; McMahon Sr. was not hitting defendant. The struggle stopped and defendant ran away when he realized the McMahons were not going to stop fighting. Defendant hid up the hill behind his cabin for a few hours because he was still scared and thought the McMahons were going to come after him again. He was even more scared when he saw the sheriff's deputies arrive in the area. After everyone had left and defendant heard Farnsworth inside his cabin, he returned to the cabin. Defendant unsuccessfully tried to call his boss because he was "freaked out," needed to talk to someone, and his boss was the only one to whom he could really talk. He then fell asleep. While he was sleeping, the sheriff's deputies entered his cabin and arrested him. Defendant did not go to the hospital or visit a doctor after the incident.

Mendocino County Sheriff's Deputy Hank Stolfi interviewed James Walker and McMahon Sr. on the night of the incident. James Walker reportedly said that he "was witnessing a fight that included a pole that [defendant] was wielding and that he wanted to stop the fight, so he grabbed his .22 rifle and brought it with him and fired into the

⁹ Defendant testified that he later told a sheriff's deputy that McMahon Sr. had hit him in the face with a stick, and that actually happened.

ground to try to scare people apart or similar effect.”¹⁰ McMahon Sr. reportedly said he and his son walked together to talk to defendant.¹¹ On cross-examination, Stolfi indicated that when the men spoke with him, James Walker appeared upset and McMahon Sr. appeared upset and injured.

C. *The Prosecution’s Rebuttal*

Sheriff’s Deputy Hank Stolfi testified that on the evening of the incident, he arrested defendant. Stolfi observed defendant’s appearance and did not see any indication that defendant had been hit or punched. The deputy viewed defendant’s face, hands, and knuckles, and saw no redness, swelling, or injuries. Defendant reportedly said that when he was driving, “[t]he victims were on either side of the vehicle swinging golf clubs. One of them struck him in the left side of the face through his open window.” The deputy did not recall defendant saying that his vehicle was struck by a golf club, that his windshield was broken by someone swinging a golf club, or that McMahon Jr. had punched him when he was inside his vehicle. When defendant was asked where he was located when the initial altercation took place, he reportedly said that “it was directly in front of the residence that he was staying at.”

DISCUSSION

I. *Sufficiency of Evidence*

Defendant argues that the evidence was insufficient to support the felony and misdemeanor assault convictions because the prosecution failed to prove beyond a reasonable doubt that he did not act in lawful self-defense. We disagree.

In evaluating a claim of insufficiency of evidence, as an appellate court our “task is to review the whole record in the light most favorable to the judgment to determine whether it discloses substantial evidence—that is, evidence that is reasonable, credible,

¹⁰ James Walker testified that he never told anyone that he had fired his gun into the ground to break up an altercation among defendant, McMahon Sr. and McMahon Jr.

¹¹ McMahon Sr. testified that he might have told Deputy Stolfi that he walked together with McMahon Jr. towards defendant’s cabin. However, McMahon Sr. denied that he said defendant attacked the two men “at once, at the same time.”

and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [Citation.] The federal standard of review is to the same effect: Under principles of federal due process, review for sufficiency of evidence entails not the determination whether the reviewing court itself believes the evidence at trial establishes guilt beyond a reasonable doubt, but, instead, whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. [Citation.]” (*People v. Rodriguez* (1999) 20 Cal.4th 1, 11.) “Although we must ensure the evidence is reasonable, credible, and of solid value, nonetheless it is the exclusive province of the . . . jury to determine the credibility of a witness and the truth or falsity of the facts on which that determination depends. [Citation.] Thus, if the verdict is supported by substantial evidence, we must accord due deference to the trier of fact and not substitute our evaluation of a witness’s credibility for that of the fact finder. [Citations.]” (*People v. Jones* (1990) 51 Cal.3d 294, 314.)

Relying on isolated portions of the testimony of prosecution witnesses and his own testimony, defendant argues there was insufficient evidence to justify a rejection of his claim of self-defense. However, the jury here was presented with conflicting evidence as to whether defendant had been threatened and “what, if any aggressive action” he took against the McMahons. (*People v. Davis* (1965) 63 Cal.2d 648, 653.) “Only if the jurors were required to accept defendant’s version . . . would we be inclined to agree with defendant’s contention of justification.” (*Ibid.*) The primary issue before the jury was whether “defendant reasonably believed, under all the facts and reasonable inferences, that he was threatened with such imminent danger as to justify” the assaults on the McMahons “in self-defense. On the foregoing record this was a question of fact which is foreclosed on appeal. [Citations.]” (*Id.* at p. 654.) “Even if the evidence could be reconciled with a different finding,” as defendant suggests, “we would not be justified in concluding that the jury’s verdict[s] [were] not supported by the evidence” (*People v. Romero* (2008) 44 Cal.4th 386, 400.)

II. Instructions on the Concept of Self-Defense

Defendant alternatively argues that the verdicts (felony assault with a deadly weapon as to McMahon Jr. and simple assault as to McMahon Sr.) demonstrate that the jurors failed to follow the court's instructions on self-defense, including the requirement that the prosecution had the burden of proving beyond a reasonable doubt that the defendant did not act in self-defense. We disagree.

Even assuming, without deciding, that the jury's verdicts were "inherently inconsistent," neither the jurors' questions during deliberations¹² nor the verdicts themselves indicate that the jurors misunderstood the court's self-defense instructions. The court properly instructed the jury that "self-defense is a defense" to both the charged offenses of assault with a deadly weapon and the lesser included crime of simple assault, and that as to both the charged offenses and the lesser offenses of simple assault, the People had the burden of proving beyond a reasonable doubt that defendant did not act in self-defense. The jury was additionally instructed regarding the appropriate factors to consider in determining whether the prosecution met its burden of proving beyond a reasonable doubt that defendant did not act in self-defense.¹³ Contrary to defendant's

¹² During deliberations, the jury asked to see the investigator's report concerning the interview with McMahon Jr. The court denied the request because the report had not been admitted into evidence. The jury also requested and heard a read back of defendant's entire testimony. Finally, the jury asked if it could impose the special circumstance of great bodily injury to the lesser crime of simple assault for both McMahon Sr. and McMahon Jr. The court replied, "No."

¹³ Using language in CALCRIM No. 3470, as modified by the court, the jury was told to consider the following factors: "When deciding whether the defendant's beliefs were reasonable, consider all the circumstances as they were known to and appeared to the defendant and consider what a reasonable person in a similar situation with similar knowledge would have believed. If the defendant's beliefs were reasonable, the danger does not need to have actually existed. [¶] The defendant's belief that he was threatened may be reasonable even if he relied on information that was not true. However, the defendant must actually and reasonably have believed that the information was true. [¶] If you find that Dennis McMahon Sr. or Dennis McMahon Jr. threatened or harmed the defendant in the past, you may consider that information in deciding whether the defendant's conduct and beliefs were reasonable. [¶] Someone who has been threatened or harmed by a person in the past is justified in acting more quickly or taking greater self-

argument, we see no basis to conclude that the jurors were unable to understand and follow the instructions on self-defense, and the prosecution's burden of proof, especially where, as in this case, "the relevant instructional language seems clear and easy to understand." (*People v. Yeoman* (2003) 31 Cal.4th 93, 139.)

DISPOSITION

The judgment is affirmed.

McGuiness, P.J.

We concur:

Pollak, J.

Siggins, J.

defense measures against that person. [¶] If you find that the defendant received a threat from someone else that he reasonably associated w[ith] the victims in this case, you may consider that threat in deciding whether the defendant was justified in acting in self-defense. [¶] A defendant is not required to retreat. He or she is entitled to stand his or her ground and defend himself or herself and, if reasonably necessary, to pursue an assailant until the danger of bodily injury has passed. This is so even if safety could have been achieved by retreating."